

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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U.S. DISTRICT COURT
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BY *[Signature]*

CASEY L. TROUILLE, AS NEXT
FRIEND OF ZACHARY ELROD, A
MINOR

VS.

RAILSERVE, INC.

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§
§
§

CIVIL ACTION NO.

2-01C v 178 - *TJW*

"JURY"

PLAINTIFFS' ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL

Come now Casey L. Troquille, as Next Friend of Zachary Elrod, a Minor, Plaintiffs herein, complaining of Railserve, Inc., hereinafter styled Defendant, and make and file this Plaintiffs' Original Complaint and Demand for Jury Trial and for cause of action would respectfully show unto the Court as follows:

I.
PARTIES

1. Plaintiff, Zachary Elrod, a Minor, DOB: 05/04/98, SS#: 630-62-1610, brings this action through his next friend and natural mother, Casey L. Troquille. Zachary Elrod, a Minor, and Ms. Troquille are citizens of the State of Texas and reside in the city of Longview, Texas. Zachary Elrod, a Minor, is the natural son of Carey Elrod, Deceased.

2. Defendant Railserve is a foreign corporation, organized and existing under the law of the State of Delaware, with its principal place of business in a state other than the State of Texas, which may be served with process by serving its agent for service of process, Prentice Hall Corp. Systems, 800 Brazos, Austin, Texas 78701.

II.
JURISDICTION

3. This Honorable Court has jurisdiction over this controversy pursuant to 28 U.S.C., §1332, for the reason there is diversity of citizenship between Plaintiffs and Defendant and the matter in controversy exceeds the sum of Seventy-five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

III.
VENUE

4. The incident complained of herein occurred in Harrison County, Texas. Accordingly, venue is proper in the United States District Court for the Eastern District of Texas, Marshall Division, pursuant to 28 U.S.C., §1391(a).

IV.
GENERAL FACTUAL ALLEGATIONS

5. At all material times herein, Carey Lee Elrod (the "Decedent") was an employee of Railserve, Inc., a company engaged in the business of providing rail car switching services to Eastman Chemical Company.

6. On or about August 25, 1999, while working in the course and scope of his employment for Railserve, Inc., Decedent was crushed between two (2) railroad cars suffering multiple bodily injuries which resulted in his death (the "occurrence in question").

V.
CAUSES OF ACTION

7. Defendant acted with "gross neglect" in failing to provide Decedent with a reasonably safe work place and such "gross neglect" was a proximate cause of the occurrence in question. More specifically, Defendant acted with actual conscious indifference to the rights, safety and welfare of

Decedent in failing to eliminate, guard or warn against workplace hazards, including dangerous “close clearance” conditions, which exposed Decedent and others to an extreme degree of risk.

VI.
DAMAGES

8. Plaintiff is entitled to recover exemplary/punitive damages pursuant to Article 16, §26, Texas Constitution.

VII.
DEMAND FOR PRE-JUDGMENT INTEREST

9. Plaintiffs submit that many of the damages that they have sustained may be determined by known standards of value and accepted rules of evidence. Accordingly, Plaintiffs claim that they are entitled to pre-judgment interest in accordance with §304.104, et seq., Texas Finance Code, or as the Court otherwise directs, calculated at the legal rate or as otherwise set by law or the Court.

VIII.
DEMAND FOR JURY

10. Plaintiffs hereby demands a trial by jury of all issues in this action.

IX.
PRAYER

11. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited and required to appear and answer herein according to the law, and that upon final hearing, Plaintiffs receive judgment from Defendant for the damages hereinabove set out, for costs of suit from date of filing, for pre-judgment interest, for interest from the date of judgment, and for such other and further relief to which Plaintiffs may show themselves justly entitled and will forever pray.

Respectfully submitted

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